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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,848	01/25/2001	Matthew David Alspaugh	WIRE01008US0	5505

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EXAMINER	
SHEW, JOHN	

ART UNIT	PAPER NUMBER
2664	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/769,848	ALSPAUGH ET AL.	
	Examiner	Art Unit	
	John L. Shew	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/1/2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) _____ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *41* is/are allowed.

6)☒ Claim(s) *1,15-18 and 34* is/are rejected.

7)☒ Claim(s) *2-14,19-33,35-40,42 and 43* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 January 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 17 is objected to because of the following informalities:

Claim 17, line 2 cites "ILEC 2" should be "ILEC".

Appropriate correction is required.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 15, 16, 17, 18, 34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 7, 11, 12, 13, 14, 15 of copending Application No. 09/769852.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the respective claims are referencing the same matter.

Claims 1, 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 7 dependent on claim 1 of copending Application No. 09/769852 amended 11/29/2004. Application 09/769852 claims a communication system for communicating between points of presence and customer premises (Application 09/769852 Claim 1 lines 1-2) referenced by a communications system for servicing customers connected to access points, comprising a plurality of ATM nodes (Application 09/769852 Claim 7 line 2) referenced by a backhaul transport including a network of ATM switches, a first connection means for connecting said ATM nodes to said customer premises (Application 09/769852 Claim 1 lines 5-6) referenced by connecting means for connecting access multiplexers and an alternate backhaul transport, second connection means for connecting said ATM nodes to said points of presence (Application 09/769852 Claim 1 lines 5-6) referenced by connecting means for connecting access points and an alternate backhaul transport,

a plurality of transports connecting said ATM nodes in an ATM network having a mesh architecture (Application 09/769852 Claim 7 line 2) referenced by a network of ATM switches which is generically a mesh network, and wherein said ATM network provides an alternate backhaul transport (Application 09/769852 Claim 1 line 6) referenced by an alternate backhaul transport, for communications between said points of presence and said customer premises (Application 09/769852 Claim 1 lines 1-2) referenced by communications system for servicing customers connected to access points and using an established backhaul transport wherein the access points are points of presence to customer premises, in parallel with an established backhaul transport via an office (Application 09/769852 Claim 1 line 6) referenced by an alternate backhaul transport in parallel with said established backhaul transport, and said ATM nodes are located away from said office to be close to respective ones of said customer premises (Application 09/769852 Claim 1 lines 3- 4) referenced by multiplexers placed at locations away from said office to be close to said customers, where said customer premises are connected to access points and use said established backhaul transport to communicate with said office (Application 09/769852 Claim 1 lines 1-2) referenced by a communication system for servicing customers connected to access points and using an established backhaul transport to an office, wherein said first connection means includes one or more remote digital subscriber line access multiplexers (Application 09/769852 Claim 1 line 3) referenced by one or more remote digital subscriber line access multiplexers, access connecting means for connecting said access multiplexers to said access points (Application 09/769852 Claim 1 line 5) referenced by connecting means for connecting

said access multiplexers to said access points, and wherein said ATM network forms said alternate backhaul transport for connecting said access multiplexers with said points of presence to provide broadband services to said customer premises (Application 09/769852 Claim 1 lines 6-8) referenced by an alternate backhaul transport in parallel with said established backhaul transport for connecting said access multiplexers to provide broadband services to said customers.

Application 09/769852 claim 1 do not cite a control means for controlling the routing of data among said ATM nodes to enable the transport of information between said points of presence and said customer premises.

Application 09/769852 claim 1 cite connecting said access multiplexers to provide broadband services to said customers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the Application 09/769852 claim 1 connection of access multiplexers to provide broadband services includes a control means for routing of the information of broadband services to points of presence. Application 09/769852 claim 1 is broader in scope and encompasses the correspondent narrower limitation of claim 1.

Claim 16 dependent on claims 1 and 15 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 3 dependent on claims 1 and 2 of copending Application No. 09/769852 amended 11/29/2004. Application 09/769852 claims access multiplexers are environmentally-hardened in all-weather (Application 09/769852 Claim 2 lines 1-2) referenced by access

multiplexers are all-weather hardened for outdoor installation, pole-mountable enclosures (Application 09/769852 Claim 3 lines 1-2) referenced by access multiplexers are located in utility-pole mountable enclosures.

Application 09/769852 claim 1 do not cite a control means for controlling the routing of data among said ATM nodes to enable the transport of information between said points of presence and said customer premises.

Application 09/769852 claim 1 cite connecting said access multiplexers to provide broadband services to said customers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the Application 09/769852 claim 1 connection of access multiplexers to provide broadband services includes a control means for routing of the information of broadband services to points of presence. Application 09/769852 claim 1 is broader in scope and encompasses the correspondent narrower limitation of claim 1.

Claim 17 dependent on claims 1 and 15 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13, 14, 15 dependent on claim 1 of copending Application No. 09/769852 amended 11/29/2004. Application 09/769852 claims wherein said office is an ILEC 2 central office (Application 09/769852 Claim 13 lines 1-2) referenced by wherein said office is an ILEC central office, and said alternate backhaul transport connects to said ILEC central office to a CLEC office and to other networks (Application 09/769852 Claim 14 lines 1-2) referenced by wherein said alternate backhaul transport connects to a

CLEC office and (Application 09/769852 Claim 15 lines 1-2) referenced by wherein said alternate backhaul transport connects to other networks.

Application 09/769852 claim 1 do not cite a control means for controlling the routing of data among said ATM nodes to enable the transport of information between said points of presence and said customer premises.

Application 09/769852 claim 1 cite connecting said access multiplexers to provide broadband services to said customers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the Application 09/769852 claim 1 connection of access multiplexers to provide broadband services includes a control means for routing of the information of broadband services to points of presence. Application 09/769852 claim 1 is broader in scope and encompasses the correspondent narrower limitation of claim 1.

Claim 18 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 dependent on claim 1 of copending Application No. 09/769852 amended 11/29/2004. Application 09/769852 claims a communication system for communicating between points of presence and customer premises (Application 09/769852 Claim 1 lines 1-2) referenced by a communications system for servicing customers connected to access points, a method comprising enabling a plurality of transports to connect a plurality of ATM nodes in an ATM network (Application 09/769852 Claim 7 line 2) referenced by a backhaul transport

including a network of ATM switches, connecting said communications between said ATM nodes and said customer premises (Application 09/769852 Claim 1 lines 5-6) referenced by connecting means for connecting access multiplexers and an alternate backhaul transport, connecting said communications between said ATM nodes and said points of presence (Application 09/769852 Claim 1 lines 5-6) referenced by connecting means for connecting access points and an alternate backhaul transport, and wherein said ATM network provides an alternate backhaul transport (Application 09/769852 Claim 1 line 6) referenced by an alternate backhaul transport, for communications between said points of presence and said customer premises (Application 09/769852 Claim 1 lines 1-2) referenced by communications system for servicing customers connected to access points and using an established backhaul transport wherein the access points are points of presence to customer premises, in parallel with an established backhaul transport via an office (Application 09/769852 Claim 1 line 6) referenced by an alternate backhaul transport in parallel with said established backhaul transport, and said ATM nodes are located away from said office to be close to respective ones of said customer premises (Application 09/769852 Claim 1 lines 3- 4) referenced by multiplexers placed at locations away from said office to be close to said customers.

Application 09/769852 claim 1 do not cite controlling the routing of communications among said ATM nodes to enable the transport of said communications between said points of presence and said customer premises.

Application 09/769852 claim 1 cites connecting said access multiplexers to provide broadband services to said customers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the Application 09/769852 claim 1 connection of access multiplexers to provide broadband services includes a controlling means for routing of the information of broadband services to points of presence. Application 09/769852 claim 1 is broader in scope and encompasses the correspondent narrower limitation of claim 18.

Claim 34 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2, 3, 7, 11, 12 dependent on claim 1 of copending Application No. 09/769852 amended 11/29/2004. Application 09/769852 claims a communication system for servicing customer premises connected to access points (Application 09/769852 Claim 1 lines 1-2) referenced by a communications system for servicing customers connected to access points, and connected over an established backhaul transport to an office (Application 09/769852 Claim 1 line 2) referenced by connected to access points and using an established backhaul transport to an office, comprising an access network formed of one or more environmentally-hardened remote digital subscriber line access multiplexers (Application 09/769852 Claim 2 lines 1-2) referenced by access multiplexers are all-weather hardened for outdoor installation, in pole-mountable enclosures (Application 09/769852 Claim 3 lines 1-2) referenced by access multiplexers are located in utility-pole mountable enclosures, placed at locations away from said office to be close to

respective ones of said customer premises (Application 09/769852 Claim 1 lines 3- 4) referenced by multiplexers placed at locations away from said office to be close to said customers, and a plurality of access wireless transports connecting said access multiplexers (Application 09/769852 Claim 12 lines 1-2) referenced by said transports are wireless, access connecting means for connecting said access multiplexers to said access points (Application 09/769852 Claim 1 line 5) referenced by connecting means for connecting said access multiplexers to said access points, a mesh network (Application 09/769852 Claim 11 lines 2-3) referenced by ATM switches connected by transports in a mesh network, forming an alternate backhaul transport in parallel with said established backhaul transport (Application 09/769852 Claim 1 lines 6) referenced by an alternate backhaul transport in parallel with said established backhaul transport, connecting said access multiplexers to provide broadband services to said customer premises (Application 09/769852 Claim 1 lines 7-8) referenced by connecting said access multiplexers to provide broadband services to said customers, and including a plurality of ATM nodes (Application 09/769852 Claim 7 lines 1-2) referenced by said alternate backhaul transport includes a network of ATM switches, connected by a plurality of node wireless transports (Application 09/769852 Claim 12 lines 1-2) referenced by transports are wireless, a plurality of inter-network wireless transports connecting said access network to said mesh network (Application 09/769852 Claim 11 lines 1-2) referenced by alternate backhaul transport connected by transports in a mesh network wherein the established network is different from the alternate network.

Application 09/769852 claims 1,,2,3,7,11,12 do not cite a mesh architecture and having redundant connections.

Application 09/769852 claim 11 cites alternate backhaul transport includes ATM switches connected by transports in a mesh network.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the Application 09/769852 claim 11 of transports in a mesh network includes redundant connections since a mesh network invariably offers many alternate paths for the same endpoint connections. Application 09/769852 claim 11 is broader in scope and encompasses the correspondent narrower limitation of claim 34.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

2. Claim 14 is allowed.

Claims 2-14, 42-43, 19-33, 35-40 are objected to as being dependent upon a rejected base claim, but would be allowable if the base claim rejection is overcome and rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Shew whose telephone number is 571-272-3137. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

js

WELLINGTON CHIN
ERVISORY PATENT EXAMINER